

February 26, 2021

National FOIA Office  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW (2310A)  
Washington, DC 20460

Re: Freedom of Information Act (FOIA) Request

To Whom It May Concern:

I submit this request for records pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 and 40 C.F.R. § 2.100 *et seq.* I request that a copy of the records detailed below be provided to me. I do not wish to inspect the records first.

I seek any and all records, as that term is defined under FOIA (5 U.S.C. § 552(f)(2)), and applicable case law (*see, e.g., Forsham v. Harris*, 455 U.S. 169, 193 (1980)), existing in any format whatsoever, including, but not limited to, written correspondence, email correspondence, records of telephone correspondence, records pertaining to in-person meetings, calendar or scheduling entries, videotapes, photographs, computer print-outs, telephone messages, or voice mail messages regarding particular organizations between December 22, 2020 to January 22, 2021.

In particular, I request the following:

- Any records, logs of correspondence, communications, documents or calendar entries in possession of, or maintained by the Office of the Secretary, made during the above stated time period, which detail, describe, or contain exchanges and/or meetings between Gina McCarthy including, but not limited to, the emails with the domain nrdc.org, and the following staff email accounts:
  - Jane Nishida (Acting Secretary)
  - Dan Utich (Chief of Staff)
- Any records, logs of correspondence, communications, documents or calendar entries in possession of, or maintained by the Office of the Secretary, made during the above stated time period, which detail, describe, or contain exchanges and/or meetings, in the email accounts of Jane Nishida and/or Dan Utich, that include the following subject matter and/or keywords:
  - Pipeline
  - Keystone
  - Policies
  - Priorities
  - Transition

Notice is hereby given that I am requesting these records as an “other requester” within the meaning of 5 U.S.C. § 552(a)(4)(A)(ii)(III); see also 40 C.F.R. § 2.107(c)(iv).

Notice is hereby given that I am willing to pay the appropriate fees incurred and assessed for the document search and duplication of the agency records responsive to this request. 5 U.S.C. § 552(a)(4)(A)(ii)(III); see also 40 C.F.R. § 2.107(c)(iv).

Please search for responsive records regardless of format, medium, or physical characteristics. I request that responsive records be produced in native format, or the format most felicitous to an expedited production. Upon receipt of this request, please take all reasonable steps to preserve relevant public records while the request is pending.

If it is your position that any portion of the requested records is exempt from disclosure, I request that you provide a *Vaughn* index of those documents. See *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). As you are aware, a *Vaughn* index must describe each document claimed as exempt with sufficient specificity “to permit a reasoned judgment as to whether the material is actually exempt under FOIA.” *Founding Church of Scientology v. Bell*, 603 F.2d 945, 959 (D.C. Cir. 1979). Moreover, the *Vaughn* index must “describe each document or portion thereof withheld, and for each withholding it must discuss the consequences of supplying the sought-after information.” *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223–24 (D.C. Cir. 1987).

In the event that some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable, non-exempt portions of the requested records. See 5 U.S.C. § 552(b). Pursuant to regulation, please clearly delineate any and all redactions in such a manner so that the justification for each redaction is apparent. See 40 C.F.R. § 2.104(g). If it is your position that a document contains non-exempt segments and that those non-exempt segments are so dispersed throughout the documents as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed through the document. *Mead Data Cent. v. U.S. Dep’t of the Air Force*, 455 F.2d 242, 261 (D.C. Cir. 1977). Claims of non-segregability must be made with the same detail as required for claims of exemptions in a *Vaughn* index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

If you have any questions about this request, please do not hesitate to contact me by phone at (202) 656-5175 or by email at [info@americansforpublictrust.org](mailto:info@americansforpublictrust.org). If records are available in electronic format please email the documents to [info@americansforpublictrust.org](mailto:info@americansforpublictrust.org). If not, please send the requested documents to my attention at:

Americans for Public Trust  
107 South West Street, Suite 442  
Alexandria, VA 22314

Because of the time-sensitive nature of this request, I ask that you strictly comply with the 20-day time limit established by FOIA and applicable Environmental Protection Agency regulations. See 5 U.S.C. § (a)(6)(A); 40 C.F.R. § 2.104(a). Please be advised that once this 20-day period has expired, you are deemed to have constructively denied this request, and I will consider the internal appeals process to be constructively exhausted. See, e.g., *Citizens For Ethics And Responsibility In Government v. Fed. Election Comm’n*, 711 F.3d 180 (D.C. Cir. 2013). I also respectfully request that documents be made available as soon as they are located and reviewed via a rolling production. I will undertake to pay any and all reasonable increased costs incurred as part of a rolling production.

Sincerely,



Nathaniel C. Serslev